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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/232,866	01/15/1999	RASSOLL RASHIDI	96CAD01	8300

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EXAMINER

SCHAETZLE, KENNEDY

ART UNIT

PAPER NUMBER

3762

DATE MAILED: 01/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/232,866

Applicant(s)

RASHIDI, RASSOLL

Examiner

Kennedy Schaetzle

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 and 41-49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 41-45, 48 and 49 is/are rejected.
- 7) ☒ Claim(s) 46 and 47 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 September 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 12.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on September 30, 2002 has been entered.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 6 and 41 are rejected under 35 U.S.C. 102(b) as being anticipated by Stevens-Wright (Pat. No. 5,462,527).

Stevens-Wright discloses an electrophysiology catheter comprising an elongated flexible hollow tubular casing 10 with a plurality of spaced electrodes 26, a pair of flexible tension/compression members 32a-32d, an electrical lead 34 attached to each of the electrodes, flexible spacer means 16, and a handle including actuator 12 moveable in opposite directions for effecting simultaneous tension and compression in the respective pull members for displacing the distal end of the catheter.

Regarding claim 6, note element 19.

Concerning claim 41, comments parallel to those made in the rejection of claim 1 apply here as well.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2-5, 42-45, 48 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stevens-Wright. '527

Concerning claims 2, 5, 42, 44, 45, 48 and 49, although Stevens-Wright does not disclose the use of tension/compression members with a proximal portion of generally circular cross-section and/or a distal flattened transverse section, the applicant gives no criticality, asserts no advantage, and cites no particular purpose for this feature. There is no reason to assume that the invention of Stevens-Wright would not work equally as well as the present invention. Whether the pull members of Stevens-Wright are cross-sectionally circular, square, flat, rectangular, elliptical, or any other of the myriad of possible geometric shapes, would have been considered by artisans of ordinary skill to be a matter of obvious design. The courts have long considered changes in shape obvious (In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966)).

Regarding claims 45 and 49 specifically, Stevens-Wright shows the tension/compression members secured to one another to form a kinematic junction at the distal end generally defined by element 72.

Regarding claim 48 specifically, the examiner considers element 17 to represent a sleeve received over the tension/compression members.

Likewise for claims 3, 4 and 43, although Stevens-Wright does not disclose the use of a spring member or a wave-shaped spring member, the applicant gives no criticality, asserts no advantage, and cites no particular purpose for this feature, other than the fact that said element must maintain a transverse or lateral spacing between the tension/compression members. Since the spacer of Stevens-Wright accomplishes this same goal and therefore performs equally as well as the claimed invention, those of ordinary skill in the art would have seen the obviousness of utilizing any form of available spacer capable of providing the necessary separation.

***Allowable Subject Matter***

6. Claims 7-11, 46 and 47 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The recited kinematic junction formed by the sleeve received over the tension/compression members and spaced a preselected distance from the distal end wherein a portion of the tubular casing distal the sleeve remains substantially undeformed upon simultaneous tensioning and compressing of the tension/compression members (claim 7) is not taught by the prior art of record. The tubular casing of Stevens-Wright does not extend distal to the sleeve.

There appears to be no suggestion to incorporate the recited reference electrode set forth in claim 11 on the catheter of Stevens-Wright.

Regarding claim 46, there appears to be no suggestion for securing the first end of the spacer to the first and second tension/compression members.

***Conclusion***

7. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kennedy Schaezle whose telephone number is (703) 308-2211. The examiner can normally be reached on M-F from 9:30 - 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (703) 308-5181. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3590 for regular communications and (703) 308-0758 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

KJS  
January 8, 2003

  
KENNEDY SCHAETZLE  
PRIMARY EXAMINER  
1-8-03